

countries or countries having a special arms supply relationship with the United States, such as Israel.

Moreover, I believe there should be firm informal understandings between the Executive Branch and the relevant committees that the committees obtain advance informal notification of proposed arms transfers that are important or sensitive, and that the Executive Branch will delay implementing such sales if the leadership of the committees ask for consultation. These informal arrangements are not binding by law, but in my experience they are critical to making our foreign policy work effectively. In the light of the Chadha case, I believe informal arrangements between the Executive and Legislative Branches are more important than ever.

Such a regime would give opponents of a particular sale sufficient time, in my view, to influence the Executive Branch or, if a confrontation is inevitable, to schedule hearings and hold a vote. Since the Executive Branch and the foreign country involved are most reluctant to have such a confrontation, the Congress still retains a most powerful instrument. Of course, the President can exercise the veto, but it would be a rare event indeed for him to use it under the circumstances; if he did, he would quite clearly have to accept full responsibility for the foreign policy consequences of the act. And, it should be noted, Congress has other instruments at its disposal such as the foreign assistance authorization and appropriation acts that are less amenable to Presidential veto.

No nation wants its all-important arms supply relationship to depend on a Presidential veto. And the Executive Branch should not desire such a situation. Every major sale requires back-up equipment, spare parts, ammunition, technical assistance. For these reasons I am quite certain that all parties to a controversial sale will strain to find accommodation rather than seek total vindication. For these reasons I believe a system based on notification and consultation, rather than formal approval of particular sales, is the preferable course. At least such a system should be tried. If there are frequent confrontations between the Executive and the Congress, then the Congress retains the power to change the governing law. For example, I would agree that if the President exercises his veto in order to implement an arms sale that the Congress formally disapproves, and does so three or four times in a ten-year period, then prior legislative authority [for] major sales is probably warranted.

Thank you very much for this opportunity to testify on this important issue.

STATEMENT OF GENERAL ERNEST GRAVES, CENTER FOR STRATEGIC AND
INTERNATIONAL STUDIES, GEORGETOWN UNIVERSITY, AND FORMER
DIRECTOR OF THE DEFENSE SECURITY ASSISTANCE AGENCY

During my tour as Director of DSAA, I appeared before this committee many times to testify on the sale of arms to allied and friendly governments.

On several occasions, I testified in support of administration proposals to reduce the amount of detail that Congress has to address in its oversight of arms transfers. Congress did not agree with all of these proposals.

However, it did act to raise the threshold on certain transfers requiring notification under sections 3 and 36 of the Arms Export Control Act. It also shortened the notification period for sales to NATO, Japan, Australia, and New Zealand.

The rationale for these changes was simply this. Only a small fraction of the sales which by law require advance notification of Congress involve significant policy issues, issues which there is a possible difference of view between the Executive and the Congress. In the past, because the notification process was so extensive, we have paid a heavy price in delays, lack of responsiveness to allied and friendly governments, and consumption of the valuable time of senior administration officials and Members of Congress.

In my view, arms transfers are an important instrument of U.S. policy to be used judiciously but effectively. As Director of DSAA, I was dismayed by the delays that diminished the effectiveness of this policy instrument even when there appeared to be unanimity on the desirability of the sales involved.

Over the last five years, it has appeared to me that on this aspect of foreign and defense policy, the Executive and the Congress have reached a reasonable accommodation. It was reassuring to me to hear Secretary Dam earlier this afternoon reaffirm the commitment of the administration to consult with, and take account of, the views of Congress concerning arms sales that involve significant policy issues.

When I learned about the Supreme Court decision in INS. v. Chadha, my first concern was that it might lead to retrogression in the working relationship between the Executive and the Congress. Secretary Dam's statement makes clear that the administration does not want that to happen and is prepared to make every effort to assure that the review process continues to work as it has, with the sole exception of the legislative veto.

During the considerable period that it normally takes to consummate a major sale, there is ample opportunity for consultation between the Executive and the Congress. During this period, Congress receives recurring reports on estimated future sales, including the annual Congressional Presentation Document, the Javits report, and the Quarterly Report of Price and Availability Estimates.

Up to a point, executive-congressional consultation should be on a confidential basis in order not to compromise the discussions with the foreign governments. Once there is agreement in principle with the foreign government and between the Executive and the Congress, the sale should move ahead expeditiously with the tender and negotiation of the former LOA.

A great advantage of the present review process is that it can proceed at any time of year and the required congressional review can be completed in less than two months. If any changes have to be made, and I hope they do not, I would urge that timeliness not be sacrificed.
